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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/319,243	08/05/99	TJOA	P WC

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QM32/0523

EXAMINER

HAMILTON, L

ART UNIT PAPER NUMBER

3764

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DATE MAILED: 05/23/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/319,243

Applicant(s)  
TJoa

Examiner  
Lalita Hamilton

Group Art Unit  
3764



- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

- ☒ Claim(s) 12-23 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 12-23 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☒ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☒ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: certified copy of original foreign application

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 7
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Regarding claim 12, the phrase "rod-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12, 15-16, and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Bosko et al (3,334,899).

In regard to claim 12, Bosko et al teach all limitations. In regard to claim 15, the concave and turning regions are shown to form a smaller diameter than the diameter of the rod (fig. 1:12 and 28). In regard to claim 16, the rod is cylindrical over its length (fig. 1:12). In regard to claim 22,

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the apparatus is shown to be in one piece (fig.1). In regard to claim 23, the device may be made of plastic (col.1:37-42).

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13-14 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosko et al in further view of Jackson, Jr (4,002,163).

Bosko et al teach the above stated. Further disclosed is that short or long bars may be used and that various modifications may be made (col.5:41 and 55-60). In regard to claim 13, Jackson, Jr. teaches an exerciser and roller massage device with a length approximate the length of a human body (col.2:22). In regard to claim 14, Jackson, Jr. shows what the examiner is interpreting to be the radius of the concave portion approximately equal to the radius of the spherical surface (fig.1). In regard to claim 17, the dimensions for a diameter are taught to be between 3/4-2 1/4 inches (col.2:28-29). In regard to claim 18, the above stated dimensions are taught. In regard to claims 19-21, 22 inches is taught to be the length of the device (col.2:20-22). It would have been obvious to one of ordinary skill in the art combine the above stated in order to achieve a training device that leads to improvement in respiratory capacity.

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*Conclusion*

Any inquiry concerning this communication from the examiner should be forwarded to Lalita Hamilton whose telephone number is (703) 306-5715. The examiner may normally be reached from Monday-Thursday of the first week from 8:30 am-4:45 pm and Monday-Friday of the second week of the bi-week from 8:30 am-4:45 pm.



Lmh



Michael A. Brown  
Primary Examiner